

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
SUNSHINE COMMUNICATIONS)
CORPORATION)
Licensee of Industrial/Business Pool)
Station WPNQ622, Philadelphia, PA)
)
AND)
)
Petitions for Modification of the License of)
Sunshine Communications Corporation)
Industrial/Business Pool Station WPNQ622,)
Philadelphia, PA)

MEMORANDUM OPINION AND ORDER

Adopted: April 7, 2003

Released: April 8, 2003

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

1. *Introduction.* For the reasons set forth below, we hereby modify Sunshine Communications Corporation's (Sunshine's) license for Industrial/Business Pool Station WPNQ622, Philadelphia, Pennsylvania, to delete authority to operate on frequencies 151.5275 MHz and 158.3775 MHz.

2. *Background.* Section 90.187(b) of the Commission's Rules requires trunked systems operating on frequencies between 150 and 512 MHz to employ equipment that prevents transmission on a trunked frequency if a signal from another system is present on that frequency.¹ Such trunked systems are exempt from this "monitoring" requirement only if the applicant (1) has exclusive use of frequencies in the area;² (2) obtains the consent of affected co-channel and adjacent channel licensees whose service areas come within seventy miles of the applicant's proposed base station;³ or (3) obtains the consent of affected co-channel and adjacent channel licensees that are predicted to receive objectionable interference from the proposed station, as shown by an analysis of interference and service area contours.⁴ The licensing codes "FB8" and "MO8" appear next to each frequency of a trunked system that is exempt from the monitoring requirement.

3. On May 5, 1999, Sunshine was granted a license for Station WPNQ622 to operate "FB8" trunked operations on various frequencies, including 151.5275 MHz and 158.3775 MHz.⁵ On August 31,

¹ See 47 C.F.R. § 90.187(b).

² 47 C.F.R. § 90.187(b)(1).

³ 47 C.F.R. § 90.187(b)(2)(i),(ii).

⁴ 47 C.F.R. § 90.187(b)(2)(iii).

⁵ FCC File No. D117539. The license included FB8 (base) and MO8 (mobile) authority, which we refer to collectively herein as "FB8."

2000, we received requests to revoke the license for Station WPNQ662 from Pottstown Trap Rock Quarries, Inc. (Pottstown)⁶ and Haines & Kibblehouse, Inc. (Haines & Kibblehouse),⁷ which we treated as informal requests for Commission action.⁸ Pottstown and Haines & Kibblehouse stated that their stations were directly affected by the grant of a license for Sunshine's "FB8" trunked Station WPNQ622, as follows:

<u>Station Affected</u>	<u>Affected Frequency</u>	<u>Sunshine "FB8" Frequency</u>
Pottstown (Station KXJ427)	158.3850 MHz	158.3775 MHz
Haines & Kibblehouse (Station KCJ468) ⁹	151.5200 MHz	151.5275 MHz

4. On August 7, 2002, we requested that the Forrest Industries Telecommunication (FIT) propose a solution to the petitions.¹⁰ In this connection, we concluded that Pottstown and Haines & Kibblehouse were affected licensees and that their consent should have been obtained before FIT recommended "FB8" operation for Sunshine on the pertinent frequencies.¹¹ On August 29, 2002,¹² FIT responded to the Pottstown and Haines & Kibblehouse petitions by recommending that Sunshine modify its operation on frequencies 151.5275 MHz and 158.3775 MHz to specify "non-FB8" status.¹³ On November 27, 2002, we requested that Sunshine state whether it would be willing to file an application to

⁶ Letter from Russell A. Mumaw, Communications Supervisor, Pottstown Trap Rock Quarries, Inc., to Secretary, Federal Communications Commission (filed Aug. 31, 2000) (Pottstown Petition).

⁷ See 47 C.F.R. § 1.41.

⁸ Letters from Russell A. Mumaw, Communications Supervisor of Haines and Kibblehouse, Inc., Bechtelsville Asphalt, a division of Haines and Kibblehouse, and Silver Hill Quarry a division of Haines and Kibblehouse to Secretary, Federal Communications Commission (all filed Aug. 31, 2000). We will refer to these letters collectively as the Haines & Kibblehouse Petition.

⁹ In its petition, Haines & Kibblehouse incorrectly identifies Sunshine's interfering FB8 frequency as 158.3775 MHz rather than 151.5275 MHz.

¹⁰ Letter from D'wana R. Terry, Chief, Public Safety Private Wireless Division, to FIT dated August 7, 2002 (Division's August 2002 Letter). FIT is the FCC-certified private land mobile radio frequency coordinator that certified Sunshine's application.

¹¹ *Id.* at 2.

¹² Letter from David Smith, Frequency Coordinator, FIT, to Tracy Simmons Deputy Chief of the Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division dated August 29, 2002 (FIT Letter). The FIT stated that its coordination was properly performed considering the time period in which it was done and that Section 90.187 had "changed dramatically" since the time it submitted Sunshine's application on November 20, 1998. *Id.* at 1 citing the FIT letter dated June 11, 2001.

¹³ FIT letter at 2. "Under "non-FB8" status, Sunshine would be required to monitor the channels.

modify its license for Station WPNQ622 to conform to the FIT's proposal.¹⁴ In response, Sunshine states that it agrees to modification of its license to delete the frequencies 151.5275 MHz and 158.3775 MHz.¹⁵

5. *Discussion.* Based on the information before us, we conclude that the frequency coordination of Sunshine's application, which resulted in the grant of the license for Station WPNQ622, Philadelphia, Pennsylvania, was defective as to the frequencies 151.5275 MHz and 158.3775 MHz. We further find that Sunshine consents to modification of Station WPNQ622 to delete the frequencies 151.5275 MHz and 158.3775 MHz, and that so modifying the license would serve the public interest.

6. Section 316(a)(1) of the Communications Act of 1934, as amended, permits the Commission to modify a station license if the action will promote the public interest, convenience, and necessity.¹⁶ We believe that modification of Sunshine's license for WPNQ622 to remove the frequencies 151.5275 MHz and 158.3775 MHz will promote the public interest, convenience and necessity. Specifically, it will resolve a post-licensing conflict by preserving the existing coverage areas of Pottstown and Haines & Kibblehouse and preventing harmful interference, while not unduly disrupting Sunshine's operations. Given that Sunshine has consented to such modification, there is no need for further notice or action before we so modify the subject license.

7. ACCORDINGLY, IT IS ORDERED that, pursuant to 47 U.S.C. § 154(i) and 47 C.F.R. § 1.41, that the informal requests for Commission action filed by Pottstown and Haines & Kibblehouse on August 31, 2000, ARE GRANTED to the extent indicated above and ARE OTHERWISE DENIED.

8. IT IS FURTHER ORDERED that, pursuant to 47 U.S.C. §§ 154(i), 316, and 47 C.F.R. § 1.87, that the license for Station WPNQ622, Philadelphia, Pennsylvania, of Sunshine Communications Corporation, IS MODIFIED by deleting the frequencies 151.5275 MHz and 158.3775 MHz.

9. This action is taken under delegated authority pursuant to 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry
Chief, Public Safety and Private Wireless Division
Wireless Telecommunications Bureau

¹⁴ Letter from D'wana R. Terry, Chief, Public Safety and Private Wireless Division, to FIT dated November 27, 2002, DA 02-3225. (Division's November 2002 Letter), at 4. The Division also responded to FIT's claims, *see supra* note 12, that its engineers studied Sunshine's application and determined that Pottstown and Haines & Kibblehouse were affected licensees under the rules in effect when the Sunshine application was filed. *Id.* at 2.

¹⁵ *See* Sunshine Letter at 1 ("[Sunshine] will modify our station license to delete . . . 151.5275 and 158.3775").

¹⁶ 47 U.S.C. § 316(a)(1).